

# The PRETENCE of the present East India Companies Property Stated and Considered as well in Respect to the Sole Trade Exclusive to all others, as to their Islands, Forts, &c.

**T**HE Pretence of their Property to the *Sole Trade Exclusive to all others* is grounded on the *Kings Charter*, which Grants them the Trade in that manner, and Provides that they shall not be dissolved without 3 years notice.

*The Proviso for 3 years is as follows.*

PROVIDED also that if it shall hereafter appear to Us Our Heirs or Successors, That this Grant or the continuance thereof in the whole or any part thereof shall Not be Profitable to Us, Our Heirs or Successors, or to this Our Realm, That then and from thenceforth upon and after Three Years warning to be given to the said Company by Us, Our Heirs or Successors under Our or their Privy Seal or Sign Manual, this present Grant shall Cease, be Void and Determin, to all Intents, Constructions and Purposes.

Upon this Proviso the Judges have given this following Opinion.

We are of Opinion, That by this Clause the East India Company cannot be Determined till after 3 years warning given them under the Privy Seal or Sign Manual, and that they will continue a Company during the said 3 years, and may Trade and Act in the mean time.

It will not be amiss to make some Observations on this Opinion of the Judges.

1. The Judges Opinion is given strictly upon the foregoing Clause of the Charter, with respect only to what the King Himself might do, which does no ways limit the Parliament; For the Parliament made Void a Charter granted to the Canary Company in Anno 1667. And Our Kings themselves in all Reigns have Vacated their Patents so soon as they have been found Prejudicial to the Publick Good.
2. The Judges do not say, That though the Company continue a Company, and may Trade and Act, That others Their Majesties Subjects may not likewise lawfully Trade into and from the East Indies as well as the said Company, notwithstanding their Charter.
3. They do not say in what manner the Company may Trade notwithstanding such Notice, whether as amply as ever they did before, or if it may not be Limited only to the bringing home their Effects.
4. They do not say the King could not give a concurrent Grant or Charter before the expiration of the said Three Years, and indeed it seems strange to say, That the King cannot give his Subjects leave to do that, which they can Lawfully do without his Leave.
5. They do not say the Company have not Forfeited their Charter, and that by a Scire Facias the King could not void it without any Notice given them.

And having thus considered the Judges Opinion on the Proviso, I shall now proceed to consider the Companies pretence of Property to the Sole Trade exclusive to all others.

There can be no Property without a Legal Right, and therefore if the Company have not a Legal Right they can have no Property, and that they have no Legal Right may appear by these following Considerations.

All Property is grounded on the Common or Statute Law of this Land, and the Companies pretence of Property to the Sole Trade being grounded on the Kings Charter only, its plain they can have no other Right or Property than what the King can lawfully grant them.

All Trade being the Right of every Subject of this Realm, they cannot be excluded from it by Grant from the King without consent in Parliament, and this appears not only from the Petition which the Company themselves preferred the last Session to the Honourable House of Commons, Praying to have an Act of Parliament passed to confirm the said Trade to them exclusive to all others.

But the same is likewise evident by the several Judgments at Law given, since the late Happy Revolution, against the East India Company and the African Company, notwithstanding their Charters, and may likewise appear by the Message which the King himself lately sent the House by an Honourable Member of His Privy Council.

And besides that the Company have no Property in that Trade exclusive to others, There would arise many inconveniences by their enjoying it Three years after warning (although they had a Property thereunto) and the whole Trade would be in danger to be lost to this Nation, of which His Majesty having been pleased to take Notice in His Message to the House on this occasion as the reason why he did not give them Notice, it will be therefore unnecessary to mention the particulars.

But the Company must nevertheless remain a Company and Body Politick three years for some purposes; otherwise many mischievous Consequences would ensue, the prevention of which must have been what was intended by the Proviso in their Charter for 3 years warning.

For if the Company should cease and determine immediately there could be no Proprietor to their Estate, there would be no body to make Satisfaction for what is due from them to others, nor to demand or receive of those who are Debtors and accountable to them, so that they could neither pay what they Owe, nor receive what is due to them, nor divide their remains (if any there were) to the Adventurers.

And as to the Property they claim in their Islands, Forts, &c. in the same manner as any man in England has to his Mannors and Lands, it is Evident by the Clause in their Charter before recited, that their Grant may determin and Cease at 3 years warning given under the Privy Seal or Sign Manual, and when that is determined, so is their Pretence of Property, which therefore differs very much from the right a particular man has to his Mannors and Lands, the one being founded on a Legal Right, the other depending only on the Kings Will and Pleasure.

But though they have no Right or Property to the Sole Trade, it is to be acknowledged they have a Right and Property to their Forts, Castles, &c. although not in the same manner as they pretend; the Islands of Bombay and St. Helena, being Annexed to the Crown, and holden of the Manor of East Greenwich at a certain Quit Rent, cannot therefore be Sold to the Dutch, or French, or Alienated from Their Majesties Subjection.

Their Islands, Forts, &c. are such as have either been granted to them and their Successors as a Company by the Crown, or have been Purchased by them from the Former East India Company; so that their property to them has a Publick regard to the Trade which is National, and their Successors are those which shall succeed them in that Trade as a Company; and it is therefore altogether different from the Property which a Private Man has to his particular Estate. Nevertheless it's but just a reasonable Allowance should be made to the Company for them; in the Valuing of which it is to be considered what the Company paid either to the Crown, or the former Company for them, and the Use and Advantage they may be to the carrying on the Trade, the Value of which may be adjusted by Persons indifferently Chosen on both sides, as has been formerly practised by several Successive Companies; and if any other Forts, &c. have been acquired by the Present Company, the Value of them may likewise be adjusted in the same manner.

Upon the Whole Matter, seeing that the East India Trade is so Necessary and Advantageous, and Best to be managed by a National Joint Stock, and that the Present Company have no Right thereunto Exclusive to others, And that the said Trade is already so much impaired and in such danger to be lost to this Kingdom, as His Majesty is pleased to intimate in His Message; and was fully proved before the House of Commons in the last Session, It cannot therefore be doubted but the Honourable House will direct a Bill to be brought in in order to pass into an Act of Parliament to Establish a New East India Company, in which no one may be Excluded from his Right to that Trade, who desires to be Concerned therein, which its Humbly Conceived is the only Foundation on which this Trade can be Established, so as to be preserved and advanced to the Honour and Interest of this Nation, as His Majesty has recommended to them in his said Message.